IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.101 OF 2000

The State of Maharashtra ...Appellant.

v/s

Sou Manisha Mahesh Sohoni,
Age about 31 years,
Occ. Service,
R/o. 431/2333 Sant Tukaram
Nagar, Pimpri and at
A/6, State Bank Colony,
Madhav Baug, Shiv Tirth
Nagar, Kothrud, Pune. ...Respondent.

Mrs V.R. Bhosale, APP for the appellant - State.

Mr. M.S. Mohite for the respondent.

CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ

DATED : 2nd August, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Taking exception to the respondent's acquittal for offences punishable under sections 302, 201, 203 of the Indian Penal Code by the learned Additional Sessions Judge, Pune, the State has appealed.

2. The prosecution arises out of an unusual story. Accused is sister of the victim. Victim Pravin Damodar Torwekar was addicted to liquor. He used to

stay in the same house with accused Manisha. There used to be quarrels between the accused and the victim on account of victim's improper conduct. On 11/01/1998, at about 11.30 p.m., the deceased came home drunk and had a quarrel with the accused. The accused lifted a grinding stone and hit the victim on his head 3/4 times, killing him on the spot. Next day, the victim's body was seen by the victim's mother Shaila who was asked on telephone by the accused to meet the accused at the Office where the accused was working. Accused made it appear as if the body was noticed for the firs time by Shaila and then gave a report to the police.

3. Police registered an offence, performed inquest on the dead body and sent it for post-mortem examination, which revealed that the victim had sustained as many as 23 antemortem surface wounds. Police also performed panchanama of the spot, seized incriminating articles, interrogated the accused, seized grinding stone and a gown, sent the articles seized to Forensic Science Laboratory, recorded the statements of witnesses and, on completion of evidence, sent a charge-sheet to the learned Judicial Magistrate, First Class, Pimpri who committed the case to the Court of Sessions at Pune.

4. The learned Additional Sessions Judge to whom the case was assigned, charged the accused for offences punishable under sections 302, 201 and 203 of the Penal Code. The accused pleaded not guilty and hence was put on trial.

5. In its attempt to bring home the guilt of the accused, the prosecution examined in all 7 witnesses. At the end of the trial, the learned Additional sessions Judge examined the accused under section 313 of the Criminal Procedure Code and upon consideration of the prosecution case, in light of defence raised, held that the prosecution had failed to prove that the accused had either committed murder or had caused disappearance of evidence or given false information. He, therefore, acquitted the accused. Aggrieved thereby the State has appealed.

6. We have heard the learned Additional Public Prosecutor for the State and the learned Counsel for respondent - original accused.

7. With the help of the learned Counsel, we have gone through the entire evidence in order to find out whether the learned trial judge erred in acquitting the accused. The evidence by which the prosecution sought to connect the accused to the crime comprises

of motive, extra judicial confession made by the accused to her mother and brother, discovery of incriminating articles under section 27 of the Evidence Act and reports of Forensic Science Laboratory indicative of involvement of the respondent - accused.

8. P.W. 2 - Savita Sathe is a maid servant working in the house of the accused. Instead of stating about any quarrels between the accused and the victim, she stated that the victim was addicted to liquor and ganja and used to return every day after having quarrelled with some one. She states that even on the incidental evening, the victim had returned after quarrelling with some one with injuries on his person. Thus, the evidence of P.W.2 Savita Sathe is totally unhelpful for the prosecution.

9. P.W.3 - Shaila Torvekar, a teacher by profession, is the mother of the accused as well as the victim, and P.W. 4 - Ajit Torvekar is victim's brother. Their entire evidence does not give any clue about any quarrels between the victim and the accused. Thus, there is no evidence about any motive in the accused to commit this murder.

10. The evidence about extra judicial confession is in the form of one sentence each towards end of examination-in-chief of P.W.3 - Shaila and P.W. 4 - Ajit. P.W. 3- Shaila states that on the next day of incident the accused told her that she had killed Pravin. P.W. 4 - Ajit stated that on the incidental night, Pravin had come drunk and quarrelled with husband of accused. According to P.W. 4 - Ajit, the accused told him that because of the quarrel with her husband, she was angry and, in the heat of anger, in the night, she got up and threw a grinding stone on the head of the victim.

11. P.W. 4 - Ajit denied that in a family feud, he and his mother are on one side and the accused and her father are on the other side and, therefore, both of them were telling lies against the accused. It may, however, be seen that these extra judicial confessions are, indeed, not reliable. Both the witnesses do not state the context in which the accused Manisha made such confessions to them. In order to inspire confidence about truthfulness, evidence in respect of extra judicial confession must show that it was made naturally, to a person of confidence. There ought to have been some occasion for the accused to make separate confessional statements to both of them. The witnesses do not state that they had an occasion to

discuss the incident with the accused, or that the accused was filled with remorse, or was forced to confess when grilled by the family members or the like. Stray sentences coming out of the blue were rightly rejected by the learned trial judge as not inspiring any confidence about their truthfulness. Therefore, we do not see any impropriety in the learned trial judge's rejection of this part of evidence.

12. The next circumstances which was supposed to connect the accused to the crime is discovery of incriminating articles at her instance evidenced by panchanama at Exhibit 13 made on 14/1/1998. Apart from the fact that P.W. 1 - Sachin Nevalkar, Panch of the panchanama at Exhibit-13, says nothing about any disclosure made by the accused in police custody, the evidence of P.W. 7 - Investigating Officer P.S.I Bankar also does not conform to the requirements of section 27 of the Evidence Act. His evidence shows that the disclosure at Exhibit-13 was made on 14/1/1998 and, thereafter, he had arrested the accused. Thus, the disclosure was not made when the accused was in custody of the Officer. According to P.W. 1 - Sachin, police searched the house and in the course of search in the house, found a grinding stone and a wet gown in the bathroom. Even this part of the

evidence is suspicious in view of the fact that the police had conducted an elaborate spot panchanama vide Exhibit-8 on 13/1/1998. The panchanama shows that the panchas and policemen had seen the entire house. It is not known as to why they did not notice the grinding stone and the gown in the bathroom when bathroom itself has been described in the panchanama. The panchanama recites that in 5 x 4 bathroom, there was a bucket and tub etc. Thus, the evidence about seizure of blood stained gown and a grinding stone on 14/1/1998 coming from P.W.1 - Sachin and P.W. 7 - P.S.I. Bankar is suspicious and unworthy of credence.

13. These articles were sent to the Forensic Science Laboratory along with the blood samples of the accused also. The reports of the Laboratory are at Exhibits-17, 18 and 19. Blood Group of the accused is "A", according to report at Exhibit-19. Whereas, Blood Group of the victim was "O" as may be seen from report at Exhibit-18. The report in respect of incriminating articles at Exhibit-17 would show that the articles seized vide panchanama of spot were stained with Blood Group "O". The grinding stone also had stains of Blood Group "O". The test in respect of the gown was inconclusive, though it had stains of human blood. Thus, even if one were to presume that the gown belonged to the accused, since it did not

have stains of blood of the victim, it would be difficult to connect the accused to the crime on the basis of this report of the Laboratory at Exhibit-17. In any case there is no evidence whatsoever to show that the gown belonged to the accused.

14. Before parting with this judgment, we may advert to the evidence of P.W. 6 - Dr. Milind Sonavane and the notes of post-mortem examination proved by him at Exhibit-25. If it is imagined for a while that the accused did kill her brother by throwing a grinding stone at her brother, such an assault would have produced one or two serious injuries on the head or chest, depending on the part of the body on which the grinding stone was thrown. The evidence of Dr. Sonavane would show that there were as many as 23 injuries of various descriptions over the entire body indicative of full-fledged scuffle rather than drunkard being hit with a stone when he was asleep or unable to resist. This too is inconsistent with the prosecution story.

15. The findings recorded by the learned trial judge are, in our opinion, perfectly probable and compatible with the inferences which could be drawn from the evidence tendered. We, therefore, see no reason to interfere with the acquittal recorded by the learned

trial judge. Consequently, the appeal fails and is dismissed. Bail bonds, if any, furnished by the respondent - accused shall stand cancelled.

(V.G.PALSHIKAR, J.)

(R.C. CHAVAN, J.)